alternatives discussed in the Third Further NPRM, the third alternative will best achieve our goals for a methodology for applying the benchmark system to adjust capped rates when adding or deleting channels.[344] We therefore adopt that approach.

246. In order to help assure that our methodology for adjusting capped rates when channels are added to, or deleted from, regulated tiers will help promote the growth and diversity of cable programming services, we will also permit operators a mark-up on new programming expense of 7.5%.[345] This mark-up will apply only to any additional programming cost for a tier,[346] measured on a per subscriber

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[344] We are not persuaded that other modifications to the third alternative offered by commenters are preferable. They are either inconsistent with our goal of maintaining reasonable rates, do not provide sufficient incentives for the growth and diversity of programming, and/or as proposed lack sufficient explanatory information or hard data to make an adequate assessment. Thus, Liberty's proposal suffers the same defects as option one regarding the potential for unreasonable rates since option one is a part of the Liberty proposal. Liberty Media Corp. Comments at 6-12 (Sept. 30, 1993). Cable Operators modification is also inconsistent with our goal of providing reasonable rates for subscribers, since it does not provide subscribers with the benefits of the efficiencies reflected in the benchmark curve. Cable Operators Comments at 7-8.

[345] The record does not provide extensive information on what would be an appropriate mark-up for programming expense. However, in our Cost Proceeding, we have identified 11.25% as a reasonable rate of return for an operator's investment in provision of regulated cable services. We believe that the mark-up on programming expense should be less than the rate of return on longer term investment in assets such as tangible plant in service. On the other hand, in order to help assure the continued growth of programming services, we believe that the mark-up we established at the outset of our going-forward methodology should not be established at a minimal level. We thus choose 7.5% as a cautious choice for an initial permitted mark-up on programming expense. We will carefully monitor the impact of this permitted mark-up to assure that it is fair to cable operators and subscribers. We will revise it later if appropriate.

[346] Programming costs for purposes of external costs consist of any new or additional retransmission consent fees incurred after October 6, 1994 or compulsory copyright fees paid for carriage of distant broadcast signals.

basis occurring after May 15, 1994. Operators must also reduce rates by any decreases in programming expense plus an additional 7.5% after that date. This will reduce incentives for operators to delete programming in order to replace it with new programming to which the mark-up could then be applied.[347]

247. Under these requirements, operators will first remove all external costs from the tier charge and then adjust the residual component of the tier charge by a specified amount per channel when the total number of regulated channels increases.[348] Should the total number of regulated channels decrease, the residual component of tier charge will be reduced by a specified amount. The per-channel adjustment factors used to calculate changes in permitted tier charges are derived from our benchmark equation and appear as a Table in the Technical Appendix.[349] The Technical Appendix describes in some detail how they are computed.[350]

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[347] The valuation of programming costs for programming obtained from affiliated programmers will be governed by our affiliate transaction rules adopted in our Cost Proceeding.

[348] As explained in para. 174-175, supra, only the residual component of the tier charge is adjusted annually for inflation. This eliminates the need to compare changes in external costs to inflation.

[349] For example, if the average of the initial and final number of regulated channels is 46.5 or greater, then the per channel adjustment is $0.01. If the average is 7 (the lowest channel capacity in our sample survey), the per channel adjustment factor is $0.52. If the average is between 30 and 35.5 channels (this interval contains the mean value of total regulated channels for our sample), then the per channel adjustment is $0.03).

[350] The basic methodology is to substitute mean values of our noncompetitive benchmark sample in the benchmark equation for all variables but the one that reflects total regulated channels. We then vary the magnitude of the total regulated channels variable to calculate the per channel adjustment factors. However, because low channel capacity systems are likely to have different characteristics than the average for the whole sample, we made a separate calculation for the seven to 20 channel region, using mean values for the subsample of noncompetitive systems with 20 or fewer channels instead of mean values for the entire noncompetitive sample. The noncompetitive sample exhibited channel capacities ranging from seven to 70. Because

248. When a cable system changes the number of regulated channels offered, it must average the initial and final number of channels and find the adjustment factor in the table corresponding to that average. For any service tier, the total permitted adjustment is the product of the per channel adjustment factor and the change in the number of regulated channels on that tier. The adjustment is positive if the number of regulated channels has increased and negative if the total number of regulated channels has decreased. If a cable operator is merely restructuring tiers and there is no change in the total number of regulated channels, then the operator would find its total number of regulated channels in the table, note the corresponding per channel adjustment factor, and calculate adjustments in network costs per tier as explained earlier in this paragraph. After the residual component of the tier charge is adjusted in this fashion, all external costs, including programming expenses, will be combined with the adjusted residual to determine the final tier charge. As stated, any increased level of programming expense will be entitled to a 7.5 percent mark-up.

249. The foregoing methodology for adjusting capped rates when channels are added or deleted from a regulated tier is set forth in detail in our new rule section 76.922(e). FCC Form 1210 and associated instructions also sets forth in detail this methodology for adjusting capped rates when channels are added to, or deleted from, a regulated tier, as well as for external cost and inflation adjustments generally. This methodology will provide a relatively simple way for operators to determine rates when new programming services are added to regulated offerings. It will thus facilitate the provision of new programming services, and is not unduly burdensome on operators and regulators. It is also fully consistent with our revised benchmark approach to setting initial regulated rates and can be used for deletions of channels, and moving channels between regulated tiers. This approach also assures that channel additions or deletions on one tier do not affect rates on other tiers.

B. Upgrades Initiated Shortly Before Rate

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there are few systems in our sample with large channel capacities, we are less confident of the precision of our per channel network cost adjustment factors in the region above 50 or 60 channels. For this reason, we will explore further the issue of network cost adjustments in large capacity systems in the Further Notice of Proposed Rulemaking in this proceeding. This question is also discussed in more detail in the Technical Appendix.

Regulation

1. Background

250. In the Third Further NPRM we sought comment on whether operators with rates below benchmark levels which initiated or completed system upgrades shortly before rate regulation should be permitted to raise rates to benchmark levels without any cost showing. We also solicited comments on alternatives to full cost-of-service showings that could permit recovery of such upgrade costs. In particular, we sought comment on whether the streamlined cost-of-service showing proposed in the Cost-of-Service NPRM should be applied to these situations.

2. Comments

251. Cable operators generally favored permitting operators that completed upgrades prior to regulation to raise their rates to the benchmark.[351] A number of commenters supported permitting operators to use streamlined cost-of-service showings.[352] One state commission, the Massachusetts Community Antenna Television Commission, questioned the extent to which rate increases are necessary to assure a reasonable return, since when systems are upgraded they may introduce at least some declining costs resulting from economies of scale as well as reduced maintenance costs. The state commission expressed concern regarding the possibility of a windfall, and pointed to cost-of-service proceedings as an option for systems that believe a reasonable return is denied by our other rate regulations.[353] A coalition of local franchising authorities opposed permitting systems which initiated upgrades shortly before rate regulation from raising rates to the benchmark level because doing so, they contend, gives preferential treatment to operators depending on when they made improvements. They argue that there is no evidence before the Commission that an adjustment is necessary, given the

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[351] See, e.g., Viacom International, Inc. Comments at 15 (Sept. 30, 1993); TCI Comments at 3-4 (Sept. 30, 1993); NCTA Comments at 12-14 (Oct. 1, 1993); Cablevision Industries Corp., et. al. Comments at 14-16 (Sept. 30, 1993).

[352] See, e.g., Viacom International Inc. Comments at 13-15 (Sept. 30, 1993); Fidelity Reply Comments at 2-4.

[353] Massachusetts Community Antenna Television Commission Comments at 4-5 (Sept. 30, 1993).

way the benchmarks were calculated.[354] GTE argued that these upgrades should not be granted external treatment because of the Commission's presumption that the initial rates cover system costs and that if rates are not adequate, the operator has the cost-of-service option.[355]

3. Discussion

252. Because we have decided on reconsideration to replace the benchmark system with a requirement that, with certain exceptions, all rates be reduced by the competitive differential to avoid refund liability, it is no longer necessary or appropriate to address the issue raised in the Third Further NPRM as to whether operators with rates below benchmark levels which initiated or completed system upgrades shortly before rate regulation should be permitted to raise rates to benchmark levels without any cost showing. Moreover, even if we had retained the original benchmark approach for determining initial regulated rates we would decide not to permit operators with rates below benchmark levels which initiated or completed system upgrades shortly before rate regulation to raise rates to the benchmark level without any cost showing. As discussed in the Rate Order, below-benchmark rates are presumptively not unreasonably low for cable operators because they were voluntarily established by operators in an unregulated environment.[356] Operators have not provided factual information that would alter the conclusion that rates voluntarily established by them as of the initial date of regulation will not be unreasonably low for them even if they have incurred upgrade costs. In addition, absent a cost showing, local franchising authorities and the Commission would not be assured that the benchmark rate reflects a reasonable cost-based rate for recovery of the costs of the upgrade. Also, it has not been shown how we could adequately define past upgrades to determine eligibility for this treatment. Accordingly, we conclude that we shall not permit operators to raise rates above otherwise permitted levels on account of upgrades initiated or completed before regulation without any cost showings.

253. Providing for a streamlined cost-of-service

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[354] Austin, Texas, et. al. Comments at 4-8 (October 7, 1993); See, e.g., NATOA et. al. Reply Comments at 3, n. 5 (October 7, 1993).

[355] GTE Reply Comments at 12 (October 7, 1993).

[356] See Rate Order at para 232.

showing for past upgrades would require an identification of past upgrade costs and evaluation of them in accordance with appropriate cost-of-service standards. We believe that this would be an unusually complex undertaking. In addition, as discussed herein, it has not been shown that below-benchmark rates established by operators are unreasonably low for them. Accordingly, we will additionally not establish special streamlined cost-of-service showings for past upgrades. Operators for whom our general rate regulations do not permit adequate recovery of upgrades initiated or completed shortly before rate regulation took effect may file cost-of-service showings.

IV. Fifth Notice of Proposed Rulemaking

A. Termination of Transition Relief

254. As discussed above,[357] we have determined that systems owned by small operators and systems with low prices will not have to apply the full 17 percent competitive differential pending our analysis of the relationship between costs and prices for those systems. We are initiating these cost studies in our Cost Proceeding. Accordingly, we are here providing notice that we will establish further requirements concerning permitted rates for systems currently eligible for transition treatment. As stated, depending on the results of our cost studies, these further provisions could require such systems to terminate transition relief and establish full reduction rates.

B. Going-Forward Methodology

255. Cable operators are actively exploring new technical developments that may enable them to provide up to 500 channels. Some of these technical capabilities may involve significant modifications or additions to distribution plant. Others may involve compression and multiplexing techniques that permit derivation of many channels without significant new distribution plant. The benchmark table adopted in the Rate Order, and our table reflecting the efficiency curve observed in our Competitive Survey, establish per channel adjustments for systems with total channels on regulated tiers of 100 channels or less. It does not currently establish per channel rates for systems that provide more than 100 channels.

256. We solicit comment on whether we should establish a methodology for adjusting capped rates in situations

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[357] See supra, para. 127.

where there are more than 100 regulated channels. We solicit comment generally on what that methodology should be. We also seek comment on whether we could use mathematical formulations derived from existing data or tables. We also solicit comment on whether, instead of adopting a methodology for setting rates for offerings of more than 100 channels, we should cap rates at the 100 channel level unless the operator could justify a higher rate based on a cost-of-service showing. We solicit comments on how any of these proposals would effect incentives for operators to provide additional channels on an "a la carte" basis. We additionally solicit comment on whether our going-forward methodology should be modified to provide greater or lesser compensation to operators for adjustments to capped rates when channels are added or deleted from regulated tiers, and whether this would better meet our goals of encouraging infrastructure development and growth of programming. Operators should provide a complete factual justification for any claims that the current methodology is inadequate.

C. Commercial Rates

257. We have determined that we would not establish rules permitting special rates for regulated commercial cable service on reconsideration of the Rate Order. We stated, however, that allowances for commercial rates might help assure that rates for subscribers are reasonable if higher commercial earnings were offset by savings to consumers. Therefore, we solicit comment on whether we should establish regulations governing rates for regulated cable service provided to commercial establishments. In particular, we ask whether higher earnings for commercial establishments should be offset by lower rates to other subscribers. We solicit comment on whether the offset in rates to other subscribers should be exactly equal to the additional earnings from higher commercial rates. Alternatively, we could establish regulations that would mandate a specified level of sharing of earnings from higher commercial rates between operators and subscribers. We solicit comment on which approach would best serve subscribers and operators. We also solicit comment on what standards of reasonableness we could establish to govern commercial rates.

V. Regulatory Flexibility Act Analysis

A. Final Analysis for the Fourth Report and Order and Second Order on Reconsideration.

258. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. §§ 601-612, the Commission's final analysis

with respect to the Fourth Report and Order and Second Order on Reconsideration is as follows:

259. Need and purpose of this action. The Commission, in compliance with § 3 of the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. § 543 (1992) pertaining to rate regulation, adopts revised rules and procedures intended to ensure cable subscribers of reasonable rates for cable services with minimum regulatory and administrative burden on cable entities.

260. Summary of issues raised by the public in response to the Initial Regulatory Flexibility Analysis. There were no comments submitted in response to the Initial Regulatory Flexibility Analysis. The Chief Counsel for Advocacy of the United States Small Business Administration (SBA) filed comments in the original rulemaking order. The Commission addressed the concerns raised by the Office of Advocacy in the Rate Order.[358]

261. Significant alternatives considered and rejected. Petitioners representing cable interests and franchising authorities submitted several alternatives aimed at minimizing administrative burdens. In the present Order on Reconsideration, the Commission has attempted to accommodate the concerns addressed by these suggestions. For example, the Commission has chosen a more sophisticated economic model from among a number of statistical options to recalculate the competitive differential, and has reconsidered the benchmark approach such that all regulated cable systems will be required to establish rates based on the revised competitive differential. However, the Commission has determined that certain systems will not have to reduce rates by the full competitive differential immediately. Rather, the Commission will conduct cost studies of cable operators to allow systems with relatively low rates and operators with 15,000 or fewer subscribers to present evidence that the new competitive differential should not apply in full to them. These decisions will better ensure that regulated cable service rates are reasonable while reducing administrative burdens. In addition, the Commission provides administrative relief in the rate-setting process, and adopts simplified procedures concerning the requirements for calculating equipment costs and revenues for cable systems of 1,000 or fewer subscribers.

262. The Third Further NPRM in this proceeding

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[358] See id.

presented three alternative methodologies for the adjustment of capped rates when channels are added or deleted from regulated service tiers. Many commenters supported, with some suggesting modifications, the approach the Commission tentatively endorsed in the Third Further NPRM. The Commission considered alternative methodologies and found on the basis of the record that the "parallel track" approach adopted in this Order, as well as the variety of revisions to its rate rules adopted here, will best achieve the goals of ensuring reasonable rates for consumers, promoting the growth and diversity of cable programming services, and facilitating ease of administration.

B. Initial Regulatory Flexibility Analysis for the Fifth Notice of Proposed Rulemaking.

263. Pursuant to Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the Notice, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 et seq. (1981).

264. Reason for action. The Cable Television Consumer Protection and Competition Act of 1992 requires the Commission to prescribe rules and regulations for determining reasonable rates for basic tier cable service and to establish criteria for identifying unreasonable rates for cable programming services. The Commission has adopted rate regulations that require a comparison to the rates of cable systems subject to effective competition, as defined in the Cable Act of 1992 and represented in the revised benchmark formula. This Notice proposes to establish regulations governing the setting of rates for regulated cable systems with more than 100 channels, and to consider separate rate regulations for commercial entities and rules for termination of transition relief.

265. Objectives. To propose rules to implement Section 3 of the Cable Television Consumer Protection and Competition Act of 1992. We also desire to adopt rules that will be easily interpreted and readily applicable and, whenever possible, minimize the regulatory burden on

affected parties.

266. Legal Basis. Action as proposed for this rulemaking is contained in Sections 4(i), 4(j), 303(r) and 623 of the Communications Act of 1934, as amended.

267. Description, potential impact and number of small entities affected. We anticipate a possible impact on small entities because the Notice addresses the termination of transition relief for small systems owned by small operators. The Cable Act of 1992 defines a small system as serving 1,000 or fewer subscribers.

268. Reporting, record keeping and other compliance requirements. None.

269. Federal rules which overlap, duplicate or conflict with this rule. None.

270. Any significant alternatives minimizing impact on small entities and consistent with stated objectives. None.

VI. Paperwork Reduction Act

271. The requirements adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

VII. Procedural Provisions

272. Ex parte Rules - Non-Restricted Proceeding. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in Commission rules. See generally 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

273. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before 45 days after publication in the Federal Register and reply comments on or before 75 days after publication in the Federal Register. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal

Communications Commission, 1919 M Street, N.W. Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street N.W., Washington D.C. 20554.

VIII. Ordering Clauses

274. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 4(j), 303 (r), 612, 622(c) and 623 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 532, 542(c) and 543 the rules, requirements and policies discussed in this Second Order on Reconsideration and Fourth Report and Order, ARE ADOPTED and Part 76 of the Commission's rules, 47 C.F.R. Part 76, IS AMENDED as set forth in Appendix A.

275. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 4(j), 303(r), 612(c), 622(c) and 623 of the Communications Act of 1934, 47 U.S.C. §§ 154 (i), 154 (j), 303(r), 532 (c), 542(c), and 543, NOTICE IS HEREBY GIVEN of proposed amendments to Part 76, in accordance with the proposals, discussions, and statement of issues in this Notice of Proposed Rulemaking, and that COMMENT IS SOUGHT regarding such proposals, discussion, and statement of issues.

276. IT IS FURTHER ORDERED that, the Secretary shall send a copy of this Report and Order, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601 et seq. (1981).

277. IT IS FURTHER ORDERED that, the requirements and regulations established in this decision shall become effective May 15, 1994 with the exception of the 30 day notice requirement for rate changes[359] to be codified at 47 C.F.R. Section 76.964(b) which shall be effective upon publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

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[359] As discussed above, we find good cause for making this notice provision effective on less than 30 days notice in the Federal Register. See supra para. 142 and note 189; see also 5 U.S.C. Section 533(d)(3).

William F. Caton
Acting Secretary

APPENDIX A -- LIST OF COMMENTING PARTIES/PETITIONERS

APPENDIX A

MM Docket No. 92-266

Petitions for Reconsideration of Report and Order and Further Notice of Proposed Rulemaking in MM Docket No. 92-266, 8 FCC Rcd 5631 (1993)

Affiliated Regional Communications, Ltd.
Alaska Cablevision, Inc.
Alsea River Cable TV
Arizona Cable Television Association, et. al.
Atlanta Interfaith Broadcasters, Inc.
Bank of New York
Baraff, Koerner, Olender & Hochberg, P.C.
Bell Atlantic
Black Entertainment Television, Inc.
Blade Communications, Inc.
Booth American Company, et al.
C-SPAN
Cable Services
Cablevision Systems Corporation
California Cable Television Association
Center for Media Education, et al.
Century Communications Corp.
Coalition of Small System Operators
Colony Communications, Inc., et al.
Comcast Cable Communications, Inc.
Community Antenna Television Association, Inc.
Community Broadcasters Association
Continental Cablevision, Inc.
Corning Incorporated; Scientific Atlanta, Inc.
Crown Media, Inc.
Discovery Communications, Inc.
The Disney Channel
E! Entertainment Television, Inc.
Encore Media Corporation
Fairmont Cable
Harron Communications Corp.
Higgins Lake Cable, Inc.
Inland Bay Cable TV Associates
InterMedia Partners
King County, Wash., et al.
Liberty Media Corp.
Longview Cable Television
Michigan C-TEC Communities
Mountain Cablevision, Inc.
Multichannel Communication Sciences, Inc.
Municipal Franchising Authorities
National Association of Telecommunications Officers and Advisors, et al.

National Cable Television Association, Inc.
Newhouse Broadcasting Corporation
Northland Communications Corp.
Paradise Television Network, Inc.
Searle, Stanley M.
SuperStar Connection
Sur Corporation
Tele-Communications, Inc.
Time Warner Entertainment Company, L.P.
TKR Cable Company/TKR Cable of Kentucky
Turner Broadcasting System, Inc.
Valuevision International, Inc.
Viacom International, Inc.
Video Data Systems
Video Jukebox Network, Inc.
Wometco Cable Corp.

Comments/Oppositions to Petitions for Reconsideration

Ad Hoc Rural Consortium
Advanced Communications, Inc.
Affiliated Regional Communications, Ltd.
Arizona Cable Television Association
Bell Atlantic
BellSouth Telecommunications
Bend Cable Communications, Inc., et al.
Cable TV of Jersey City, Inc.
Cablevision Industries Corporation, et al.
Cablevision Systems Corporation
Center for Media Education, et al.
Consumer Electronics Group of the Electronic Industries Association
Consumer Federation of America
C-TEC Cable Systems
Continental Cablevision, Inc.
General Instrument Corporation
GTE Service Corporation
Home Recording Right Coalition
Home Shopping Network, Inc.
King County, et al.
Liberty Cable Company, Inc.
Medium-Sized Operators Group
Michigan Communities
National Association of Telecommunications Officers and Advisors, et al.
National Association of Towns and Townships
National Cable Television Association, Inc.
National Telephone Cooperative Association
Prevue Networks, Inc.
Time Warner Entertainment Company, Inc.
United States Telephone Association
USA Networks

Valuevision International, Inc.
Viacom International, Inc.
Videomaker Magazine

Replies to Oppositions to Petitions for Reconsideration

Cablevision Industries Corp., et al.
Cablevision Systems Corporation
Center for Media Education, et al.
City of Saint Paul
Coalition of Small System Operators
Continental Cablevision, Inc.
Corning Incorporated; Scientific-Atlanta, Inc.
Discovery Communications, Inc.
Engle Broadcasting
King County, Wash., et al.
Liberty Media Corporation
Medium-Sized Operators Group
Michigan C-TEC Corporation
National Association of Telecommunications Officers and Advisors, et al.
National Cable Television Association, Inc.
Paradise Television Network, Inc.
Puerto Rico Cable Television Association
State of Hawaii
Sur Corporation
Televista Communications, Inc.
Time Warner Entertainment Company, L.P.
United Video, Inc.
Valuevision International, Inc.
Viacom International, Inc.

Comments to Further Notice of Proposed Rulemaking in MM Docket No. 92-266, 8 FCC Rcd 5631 (1993)

Alsea River Cable TV
Arizona Cable Television Association, et al.
Bell Atlantic
Black Rock Cable TV
Bonduel Cable TV, et al.
Bye Cable, Inc.
Cable Services
Cableview
Cablevision Industries Corporation, et al.
Cascade Cable Systems
City of Alexandria, VA
Coalition of Small System Operators
Colony Communications, Inc., et al.
Community Antenna Television Association, Inc.
Consumer Federation of America
Continental Cablevision, Inc.
Counsel to the Municipal Franchising Authorities

Country Cablevision, Inc.
Discovery Communications, Inc.
Green River Cable TV
Massachusetts Community Antenna Television Commission
National Cable Television Association, Inc.
National Association of Telecommunications Officers and Advisors, et al.
Pacific Coast Cable Co.
Stephen Cable TV, Inc.
Tele-Communications, Inc.
Time Warner Entertainment Company, L.P.
Unites States Telephone Association
Viacom International, Inc.

Reply Comments to Further Notice of Proposed Rulemaking in MM Docket No. 92-266, 8 FCC Rcd 5631 (1993)

Bell Atlantic
Cablevision Industries Corporation, et al.
Coalition of Small System Operators
Consumer Federation of America
Continental Cablevision, Inc.
Maryland People's Counsel
Mets Fans United
Municipal Franchising Authorities
State of New Jersey, Department of the Public Advocate
Time Warner Entertainment Company, L.P.
United Homeowners Association

Comments to [Second] Further Notice of Proposed Rulemaking in MM Docket No. 92-266, 8 FCC Rcd 5585 (1993).

Adelphia Communications
Bend Cable Communications, Inc., et al.
Coalition of Small System Operators
Community Antenna Television Association
Dennis Ready
Falcon Cable Group
GTE Service Corporation
Medium-Sized Operators Group
Mullin, Rhyne, Emmons and Topel, P.C.
National Cable Television Association, Inc.
National Association of Telecommunications Officers and Advisors, et al.
National Telephone Cooperative Association
Siskiyou Cablevision, Inc.
Small Cable Business Association
Tele-Media Corporation
Union Telephone, Inc.
Valley TV Cooperative, Inc.
Wyoming Association of Municipalities

Reply Comments to [Second] Further Notice of Proposed Rulemaking in MM Docket No. 92-266, 8 FCC Rcd 5585 (1993).

Bell Atlantic
Bend Cable Communications, Inc., et al.
Coalition of Small System Operators
GTE Service Corp.

Petition for Reconsideration of First Order on Reconsideration, Second Report and Order and Third [Further] Notice of Proposed Rulemaking in MM Docket No. 92-266, 58 FR 46718 (September 2, 1993).

New York Telephone Company and New England Telephone and Telegraph Company ("NYNEX")
Attorney General of the State of Connecticut (Statement in support of NYNEX)

Oppositions to Petitions for Reconsideration

Cablevision Industries Corporation, et al.
Continental Cablevision, Inc.
Time Warner Entertainment Company, L.P.
Viacom International, Inc.

Reply to Oppositions to Petitions for Reconsideration

NYNEX

Comments to Third [Further] Notice of Proposed Rulemaking in MM Docket No. 92-266, 58 FR 46718 (September 2, 1993).

Adelphia Communications
Affiliated Regional Communications, Ltd.
Austin, Texas, et al.
Cable Television Association of New York, Inc.
Cablevision Industries Corporation, et al.
Cablevision Systems Corporation
Community Antenna Television Association
Continental Cablevision, Inc.
Discovery Communications, Inc.
et al.
Falcon Cable TV, et al.
GTE Service Corp.
Hearst Corporation
KBLCom, et al.
Liberty Media Corporation
Massachusetts Cable TV
Media General Cable
Municipal Franchising Authorities
National Cable Television Association, Inc.
National Association of Telecommunications Officers and Advisors,

National Broadcasting Company
New Jersey Board of Regulatory Authorities
New York State Commission on Cable Television
Newhouse Broadcasting Corporation
Summitt Communications
Tele-Communications, Inc.
Tele-Media Corporation
The Disney Channel
Time Warner Entertainment Company, L.P.
TKR Cable Company/TKR Cable of Kentucky
Viacom International, Inc.

Reply Comments to Third [Further] Notice of Proposed Rulemaking in MM Docket No. 92-266, 58 FR 46718 (September 2, 1993).

Adelphia Communications
Austin, Texas, et al.
BellSouth Telecommunications
Cablevision Industries Corporation, et al.
Continental Cablevision, Inc.
E! Entertainment Television, Inc.
Fidelity Cablevision, Inc.
GTE Service Corp.
KBLCom, Inc., et al.
Liberty Media Corporation
Media General Cable
National Cable Television Association, Inc.
National Association of Telecommunications Officers and Advisors, et al.
Time Warner Entertainment Company, L.P.
Viacom International, Inc.

APPENDIX B -- RULES

APPENDIX B

Title 47, Part 76 of the Code of Federal Regulations is amended as follows:

PART 76 -- CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat. as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 535, 542, 543, 552 as amended, 106 Stat. 1460.

2. Section 76.901 is amended to revise paragraph (c) to read as follows:

Section 76.901 Definitions

* * * * *

(c) Small System. A small system is a cable television system that serves 1,000 or fewer subscribers. The service area of a small system shall be determined by the number of subscribers that are served by the system's principal headend, including any other headends or microwave receive sites that are technically integrated to the principal headend.

3. Section 76.922 is amended to revise paragraphs (b), (c) and (d), and to add new paragraphs (e) and (f) to read as follows:

Section 76.922 Rates for the basic service tier and cable programming services tiers.

* * * * *

(b) Permitted charge on May 15, 1994

(1) The permitted charge for a tier of regulated program service shall be, at the election of the cable system, either: (i) a rate determined pursuant to a cost-of-service showing; (ii) the full reduction rate; (iii) the transition rate, if the system is eligible for transition relief; or (iv) a rate based on a streamlined rate reduction, if the system is eligible to implement such a rate reduction. Except where noted, the term "rate" in this subsection means a rate measured on an average regulated revenue per subscriber basis.

(2) Full reduction rate. The "full reduction rate" on May 15, 1994 is the system's September 30, 1992 rate, measured on an

average regulated revenue per subscriber basis, reduced by 17 percent, and then adjusted for the following: (i) the establishment of permitted equipment rates as required by Section 76.923; (ii) inflation measured by the GNP-PI between October 1, 1992 and September 30, 1993; (iii) changes in the number of program channels subject to regulation that are offered on the system's program tiers between September 30, 1992 and the earlier of the initial date of regulation for any tier or February 28, 1994; and (iv) changes in external costs that have occurred between the earlier of the initial date of regulation for any tier or February 28, 1994, and March 31, 1994.

(3) March 31, 1994 benchmark rate. The "March 31, 1994 benchmark rate" is the rate so designated using the calculations in Form 1200.

(4) Transition rates. Systems owned by small operators and systems with low prices shall be eligible to establish a transition rate for a tier, pending a further order of the Commission.

(A) Systems owned by small operators

(i) For purposes of determining eligibility to establish a transition rate, a system owned by a small operator is a system owned by an operator that has a total subscriber base of 15,000 or fewer subscribers as of March 31, 1994. Systems owned by cable operators with between 15,000 and 16,000 subscribers may, upon a showing of substantial hardship, obtain a waiver from the Commission of the foregoing 15,000 subscriber limit.

(ii) A system owned by a small operator shall not be eligible to establish a transition rate if the operator is owned or controlled by, or is under common control or affiliated with, a cable operator serving more than 15,000 subscribers. For purposes of this rule, a small cable operator will be considered affiliated with an operator serving more than 15,000 subscribers if such an operator holds a 20 percent or greater equity interest in the small operator.

(iii) The transition rate for systems owned by small operators on May 15, 1994 shall be the system's March 31, 1994 rate, adjusted: (1) to establish permitted rates for equipment as required by Section 76.923 if such equipment rates have not already been established; and (2) for changes in external costs incurred between the earlier of the initial date of regulation for any tier or February 28, 1994, and March 31, 1994, to the extent such external cost changes are not already reflected in the system's March 31, 1994 rate.

(B) Low-price systems

(i) A low-price system is a system (1) whose March 31, 1994 rate is below its March 31, 1994 benchmark rate, or (2) whose March 31, 1994 rate is above its March 31, 1994 benchmark rate, but whose March 31, 1994 full reduction rate is below its March 31, 1994 benchmark rate, as defined in Section 76.922(b)(2), above.

(ii) The transition rate on May 15, 1994 for a system whose March 31, 1994 rate is below its March 31, 1994 benchmark rate is the system's March 31, 1994 rate. The March 31, 1994 rate is in both cases adjusted: (1) to establish permitted rates for equipment as required by Section 76.923 if such rates have not already been established; and (2) for changes in external costs incurred between the earlier of initial date of regulation of any tier or February 28, 1994, and March 31, 1994, to the extent changes in such costs are not already reflected in the system's March 31, 1994 rate. The transition rate on May 15, 1994 for a system whose March 31, 1994 adjusted rate is above its March 31, 1994 benchmark rate, but whose March 31, 1994 full reduction rate is below its March 31, 1994 benchmark rate, is the March 31, 1994 benchmark rate, adjusted to establish permitted rates for equipment as required by Section 76.923 if such rates have not already been established.

(C) Notwithstanding the foregoing, the transition rate for a tier shall be adjusted to reflect any determination by a local franchising authority and/or the Commission that the rate in effect on March 31, 1994 was higher (or lower) than that permitted under applicable Commission regulations. A filing reflecting the adjusted rate shall be submitted to all relevant authorities within 30 days after issuance of the local franchising authority and/or Commission determination. A system whose March 31, 1994 rate is determined by a local franchising authority or the Commission to be too high under the Commission's rate regulations in effect before May 15, 1994 will be subject to any refund liability that may accrue under those rules. In addition, the system will be liable for refund liability under the rules in effect on and after May 15, 1994. Such refund liability will be measured by the difference in the system's March 31, 1994 rate and its permitted March 31, 1994 rate as calculated under the Commission's rate regulations in effect before May 15, 1994. The refund liability will accrue according to the time periods set forth in Sections 76.942, and 76.961 of the Commission's rules.

(5) Streamlined rate reductions.

(A) Small systems that are not owned by or affiliated with any other system ("independent systems"), and small systems owned by small multiple system operators ("small MSOs"), that have not already restructured their rates to comply with the Commission's rules may establish rates for regulated program

services and equipment by making a streamlined rate reduction. "Small MSOs" are those multiple system operators that (i) serve 250,000 or fewer total subscribers, (ii) own only systems with less than 10,000 subscribers each, and (iii) have an average system size of 1,000 or fewer subscribers. Independent small systems and small systems owned by small MSOs shall not be eligible for streamlined rate reductions if they are owned or controlled by, or are under common control or affiliated with, a cable operator that exceeds these subscriber limits. For purposes of this rule, a small system will be considered "affiliated with" such an operator if the operator holds a 20 percent or greater equity interest in the small system.

(B) The streamlined rate for a tier on May 15, 1994 shall be the system's March 31, 1994 rate for the tier, reduced by 14 percent. A small system that elects to establish its rate for a tier by implementing this streamlined rate reduction must also reduce, at the same time, each billed item of regulated cable service, including equipment, by 14 percent. Regulated rates established using the streamlined rate reduction process shall remain in effect until: (1) adoption of a further order by the Commission establishing a schedule of average equipment costs; (2) the system increases its rates using the calculations and time periods set forth in FCC Form 1211; or (3) the system elects to establish permitted rates under another available option set forth in paragraph (b)(1) of this Section.

(C) Implementation and notification. An eligible small system that elects to use the streamlined rate reduction process must implement the required rate reductions and provide written notice of such reductions to subscribers, the local franchising authority and the Commission according to the following schedule:

(i) Where the franchising authority has been certified by the Commission to regulate the small system's basic service tier rates as of May 15, 1994, the system must notify the franchising authority and its subscribers in writing that it is electing to set its regulated rates by the streamlined rate reduction process. Such notice must be given by June 15, 1994, and must also describe the new rates that will result from the streamlined rate reduction process. Those rates must then be implemented within 30 days after the written notification has been provided to subscribers and the local franchising authority.

(ii) Where the franchising authority has not been certified to regulate basic service tier rates by May 15, 1994, the small system must provide the written notice to subscribers and the franchising authority, described in subsection (i) above, within 30 days from the date it receives the initial notice of regulation from the franchising authority. The system must then

implement the streamlined rate reductions within 30 days after the written notification has been provided to subscribers and the local franchise authority.

(iii) Where the Commission is regulating the small system's basic service tier rates as of May 15, 1994, the system must notify the Commission and its subscribers in writing that it is electing to set its regulated rates by the streamlined rate reduction process. Such notice must be given by June 15, 1994, and must also describe the new rates that will result from the streamlined rate reduction process. Those rates must then be implemented within 30 days after the written notification has been provided to subscribers and the Commission.

(iv) Where the Commission begins regulating basic service rates after May 15, 1994, the small system must provide the written notice to subscribers and the Commission, described in paragraph (iii) above, within 30 days from the date it receives an initial notice of regulation. The system must then implement the streamlined rate reductions within 30 days after the written notification has been provided to subscribers and the Commission.

(v) If a complaint about its cable programming service rates has been filed with the Commission on or before May 15, 1994, the small system must provide the written notice described in paragraph (i), above, to subscribers, the local franchising authority and the Commission by June 15, 1994. If a cable programming services complaint is filed against the system after May 15, 1994, the system must provide the required written notice to subscribers, the local franchising authority or the Commission within 30 days after the complaint is filed. The system must then implement the streamlined rate reductions within 30 days after the written notification has been provided.

(vi) A small system is required to give written notice of, and to implement, the rates that are produced by the streamlined rate reduction process only once. If a system has already provided notice of, and implemented, the streamlined rate reductions when a given tier becomes subject to regulation, it must report to the relevant regulator (either the franchising authority or the Commission) in writing within 30 days of becoming subject to regulation that it has already provided the required notice and implemented the required rate reductions.

(6) Establishment of initial regulated rates.

(A) Cable systems, other than those eligible for streamlined rate reductions, shall file FCC Forms 1200, 1205, and 1215 for a tier that is regulated on May 15, 1994 by June 15, 1994, or thirty days after the initial date of regulation for the tier. A system that becomes subject to regulation for the